

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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Golden
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FILE: B-216955

DATE: March 14, 1985

MATTER OF: Rolm Southern California

DIGEST:

1. Protester's allegation that telephone system offered by awardee will not meet solicitation traffic capacity requirements is denied. Where awardee's compliance with solicitation requirement is subject of technical dispute between protester and ultimate user of system, protester has not carried burden of proof of showing that awardee's system would not meet the specification.
2. Allegation that cover letter to awardee's proposal showed that awardee could not meet specification requirement is denied where cover letter language may be somewhat ambiguous but overall proposal shows agreement to comply with all requirements.

Rolm Southern California (Rolm) protests the award of a contract for the lease/purchase of a telephone system to General Telephone of California (GTE) under request for proposals (RFP) No. N62474-84-R-4982, issued by the Department of the Navy (Navy). Rolm contends that the equipment offered by GTE does not meet solicitation requirements for a specified traffic capacity at a specified level of service (p.01 grade of service) and that public statements of GTE and the cover letter to GTE's proposal indicate that it cannot meet the RFP requirement that 300 digital ports (phone lines capable of processing data) will be fully equipped and ready for use by October 1, 1984.

The Navy issued this RFP on August 24, 1984, as an emergency project, with the closing date for initial proposals on August 28, 1984. On August 29, 1984, the RFP was modified to require that the "system shall be complete and operational not later than 1 October 1984 based on award by 31 August 1984." The amendment also established August 30 as the closing date for receipt of best and final offers. After evaluation of the final offers, the Navy awarded the contract to GTE as the low priced offeror at \$1,470,415.80 for the lease/purchase of the system

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(\$24,506.93 per month). The Navy specifically determined that the system proposed by GTE was in accordance with the specifications. Rolm submitted the second low technically acceptable offer at a cost of \$2,246,747.49 (\$37,445.79 per month).

On the record, Rolm has not proved its contention that GTE's offered equipment cannot meet the RFP requirements and, therefore, GTE's technical proposal is unacceptable.

Essentially, Rolm asserts that according to its calculations based on literature contained in the proposal for the GTE system offered, the system's traffic capacity is insufficient to meet RFP requirements. The Navy provides an explanation and its own calculations which show the system offered will be in excess of the RFP traffic capacity requirement. Rolm, as the protester, has the burden of affirmatively proving its case. This burden is not met where the only evidence is the conflicting statement of Rolm and the Navy. Centennial Computer Products, Inc., B-212979, Sept. 17, 1984, 84-2 C.P.D. ¶ 295.

With regard to the requirement for 300 digital data ports, Rolm initially states that in order for the system to be "complete and operational," it must be "fully equipped" with 300 digital data ports and "ready for use" with digital line cards installed by October 1. Rolm argues that GTE has publicly stated that the digital line cards will not be available until mid-1985. Thus, Rolm concludes the offer was unacceptable. In addition to these public statements, Rolm refers to a cover letter to GTE's initial proposal which states that:

"In light of the rapid install that is being required, full data capabilities are due in February 1985. However, the backplane is wired for data acceptance and enhancement."

Rolm concludes that based on that statement, the Navy, prior to award, was on notice that the GTE system would not be fully complete and ready for use on time.

The Navy states that unspecified public statements did not serve to qualify GTE's otherwise technically acceptable offer of a complete system. With regard to the cover letter, the Navy states that it construed the GTE letter to mean that the GTE system could not process data external to the system, but could handle data within the system and this

would satisfy the RFP requirement for an operational system. The Navy did not regard this statement as suggesting that digital data cards would not be provided by October 1, 1984, and states that GTE is required to furnish the necessary data cards under the contract. Finally, the Navy argues that even assuming that this language meant the cards would not be furnished timely, Rolm was not prejudiced since its price was \$776,331.69 higher than GTE's offer and the Navy doubts that this price difference could have been eliminated had Rolm been given the opportunity to revise its offer to postpone delivery of cards.

Rolm has not submitted the GTE public statements which allegedly qualify GTE's offer. In any event, proposals must be evaluated based on the information furnished with them. Aqua-Tech, Inc., B-210593, July 14, 1983, 83-2, C.P.D.

¶ 91. Thus, we agree with the Navy that the proposal, including the cover letter, is the only information which should be considered in determining whether the Navy reasonably determined that the GTE system proposed was technically acceptable. With regard to the cover letter, the language does not explicitly take exception to any RFP requirement and indicates that GTE intended to meet the requirements. GTE did not suggest in its offer that it could not or would not comply with the specifications and delivery schedule of October 1. The language in the letter may be somewhat ambiguous as to meaning and, with the benefit of hindsight, possibly the Navy should have sought clarification of its meaning. Nevertheless, we cannot say that the Navy's explanation of what it believed GTE meant was unreasonable.

We deny the protest.

for 
Harry R. Van Cleve
General Counsel